IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 821 OF 2004

Mohd. Hussein Tajuddin Murumkar ...Petitioner

Versus

Shafiq Imamuddin & Anr ...Respondents

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Mr. P.S. Dani, counsel for Petitioner

Mr. K.K.Malpathak, counsel for Respondent No.2.

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CORAM: B. H. MARLAPALLE, J.

DATED: 28TH MARCH, 2005

P. C.:-

1. Heard Mr. Dani, the learned counsel for the petitioner and Mr. Malpathak, the learned counsel for respondent No.2. The respondent No.1 is a formal party.

2. Rule. Respondent waives service. By consent rule is taken up for final hearing forthwith.

3. Against the order passed by the Sub Divisional Officer on 24.9.1999, the petitioner had filed an appeal U/sec. 257 of the Maharashtra Land Revenue Code, 1966 before the Deputy Collector and the said appeal was dismissed on 24.5.2001, the petitioner therefore, filed Second Appeal before the Divisional

Commissioner and it came to be registered as RTS Appeal No. 100 of 2001. The present respondent No.2 made an application for being impleaded as a necessary party before the Divisional Commissioner. The said application was allowed, however, on 16.7.2002, the Additional Divisional Commissioner was pleased to dismiss the appeal/revision application by invoking the powers U/section 232(2) of the Code on the ground that the appellant/applicant had failed to take steps to cause service to the added respondents. The petitioner submitted an application under Sub-section 3 of Section 232 for recalling of the earlier order and the said application was also dismissed on 19.12.2002. Another application filed by the petitioner was also met with the same fate by order dated 26.6.2003.

4. Mr. Malpathak, the learned counsel appearing for the respondent No.2 raised a preliminary objection to the fact that the impugned order passed U/sec. 232(2) or U/sec. 232(3) would be subject matter of an appeal U/sec. 232(4) of the Code and this petition need not be entertained. However, Mr. Malpathak conceded if the Appeal/Revision is decided by the Additional Divisional Commissioner on merits, the said order would not be subject to appeal before the State Government. However, he insisted that the original order could be a matter of appeal before the

State Government and therefore, the petitioner was required to file an appeal before the State Government rather than filing this petition. This submission do not commend and this petition is not debarred in view of the provisions of Section 232(4) of the Code.

5. The petitioner's appeal/revision has been dismissed only on technical reasons and it could have been possible for the revisional authority to decide the same after due steps were taken by the petitioner and failure to take steps in time could have been rectified by imposing some costs. When a statutory remedy has been provided U/sec. 257, the same could not be made illusory for technical reasons, as far as possible when the petitioner's revision application filed U/sec. 232(3) was not considered on merits. This approach of the Revisional authority is certainly hyper technical and therefore, this petition will have to be allowed so that the appeal/revision is restored to file and decided on merits after hearing all the parties including the intervenor.

6. Hence, this petition succeeds and the same is hereby allowed. The impugned orders are hereby quashed and set aside and the appeal/revision No. 100 of 2001 is hereby restored to the file of the

Divisional Commissioner, Kokan Region, Mumbai. It is directed that the same shall be heard and decided on its merits as expeditiously as possible and preferably within a period of six months after issuing notice to all the parties concerned, subject to payment of costs by the present petitioner. Costs quantified at Rs.3,000/- (Rupees Three thousand only) and the same amount shall be remitted to the Legal Services Authority of this Court, within a period of two weeks from today.

7. Rule made absolute accordingly. Writ to go forthwith to the Additional Divisional Commissioner, Kokan Region, Mumbai.